

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

L 062262

LOUISE DUTKA,

Plaintiff,

COMPLAINT

-against-

1:06cv13545(PAC/DFE)

LIFE INSURANCE COMPANY OF NORTH AMERICA and
APPLE COMPUTER, INC. LONG-TERM DISABILITY
EMPLOYEE BENEFIT PLAN,

Defendants.

Louise Dutka, by her attorneys, Dwyer & Brennan, states the following:

1. Louise Dutka is an individual.
2. Ms. Dutka was employed by Apple Computer, Inc. ("Apple") beginning in approximately December 1999.
3. Ms. Dutka actively worked for Apple until she stopped working on approximately July 23, 2003 and made a claim to receive disability benefits.
4. Ms. Dutka received benefits under Apple's short-term disability benefit plan until approximately July 22, 2004.
5. Sometime before 2003, Apple established and maintained a benefit plan to provide long-term disability benefits for its employees, and Ms. Dutka was a participant in that plan ("the Plan").
6. The Plan is an employee benefit plan as defined by the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §1001 *et seq.* ("ERISA").
7. Plaintiff does not know the name of the Plan, but, on information and belief, alleges that the name of the Plan is Apple Computer, Inc. Long-Term Disability Employee Benefit Plan.

8. Defendant Life Insurance Company of North America ("the insurance company") is a corporation organized under the laws of the State of Pennsylvania.

9. The insurance company is licensed to do an insurance business in the State of New York.

10. On or before July 1, 2002, the insurance company issued an insurance policy to the Trustee of the Group Insurance Trust for Employers in the Manufacturing Industry bearing number FLK-030104 ("the Policy").

11. The Policy funded the Plan by promising benefits payable to the Plan's participants and beneficiaries deemed qualified by the insurer for benefits under the terms of the Policy.

12. Ms. Dutka was insured under the Policy in July 2003 (and for some time before then).

13. This Court has original jurisdiction under 28 U.S.C. §1331 and 29 U.S.C. §1132.

14. Venue of this action is properly in the Southern District of New York under 29 U.S.C. §1132 (e) (2).

15. Sometime between July 2003 and July 2004, Ms. Dutka made a claim for long-term disability ("LTD") benefits under the Plan and the Policy ("Ms. Dutka's LTD claim")

16. In or about August 2004, the Plan, acting through the insurance company, approved Ms. Dutka's LTD claim.

17. Beginning with an effective date of approximately July 22, 2004, the Plan, acting through the insurance company, paid LTD benefits to Ms. Dutka for almost four months.

18. By letter dated November 22, 2004, however, the Plan, acting through the insurance company, notified Ms. Dutka that, effective November 21, 2004, she was no longer entitled to receive LTD benefits.

19. Ms. Dutka has met all her obligations under the terms of the Plan and the Policy.

20. The Plan, acting through the insurance company, acting arbitrarily and capriciously, wrongly stopped paying LTD benefits to Ms. Dutka and failed to provide a full and fair review of the decision to stop paying those benefits.

21. Ms. Dutka has been disabled under the terms of the Plan and the Policy since July 23, 2003, and entitled to receive LTD benefits since on or about July 22, 2004, and she continues to be so.

WHEREFORE, plaintiff demands judgment under 29 U.S.C. 1132(a)(1)(B) against defendants as follows:

- A. An award of money equal to the sum of monthly benefits that defendants have failed to pay since November 21, 2004, plus interest;
- B. A declaration that plaintiff is now disabled under the terms of the Plan and the Policy and remains entitled to future monthly benefits, unless her condition improves so that she is no longer disabled;
- D. An award of costs, disbursements, and attorneys' fees under 29 U.S.C. 1132(g)(1); and
- E. Such other and further relief as this Court may decide is just and proper.

Dated: New York, NY
27 November 2006

Dwyer & Brennan

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BENEFIT PLAN,**

Defendants.

SUMMONS and COMPLAINT

Dwyer & Brennan

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